

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
Seeks Comment on the Commission's Rules Relating to)	
High-Cost Universal Service Support and the ETC)	
Designation Process)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

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SUMMARY

During the last two decades, rural carriers have continued to invest in rural, high-cost and insular areas in the United States based on a system of rate-of-return regulation, NECA pooling, and universal service support. This existing regulatory structure has allowed the Commission to meet its Congressional mandate to ensure rural consumers access to telecommunications services at prices that are comparable to similar services and prices received by urban consumers.

Current portability rules are placing a strain on support mechanisms and threatening the sustainability of universal service. Rural carriers therefore have a strong interest in ensuring that reforms to the universal service rules provide for cost recovery consistent with their past decisions to invest in networks under the then lawful regulatory rules.

New regulatory policies and revised universal service portability rules therefore must permit rate-of-return rural carriers to recover their investment in the total network facilities needed to provide comparable rates and services to customers living in rural and high-cost areas. Rules that base incumbent support on embedded costs should be retained to maintain stability for the smaller companies that serve high cost areas. All lines, primary and secondary, must be included when determining a rural carrier's embedded costs. High-cost support reflects the legitimate costs of rate-of-return rural carriers serving their entire rural study areas. Without support based on these lawfully approved costs, many consumers living in rural high-cost regions of the United States would not have access to affordable and comparable telecommunications services. Any reduction in high-cost support due to limiting support to primary lines would therefore adversely affect the ability of rural carriers to deliver universal service to consumers living in rural, high-cost, and insular areas at affordable prices.

The “identical support rule” should be abandoned. It allows competitive eligible telecommunications carriers (CETCs) to receive the same per line support as ILECs, based on the ILEC’s costs. Wireless carriers therefore have every reason to seek CETC status in rural areas, particularly when they can do so without ever justifying their need for support or demonstrating their costs. The investment world has encouraged them to do so. Salomon Smith Barney recently advised investors that, “USF is the single most important opportunity for rural wireless carriers to improve their return on capital.” It is no surprise that CETCs are taking advantage of rules that permit them to garner windfall resulting in excessive support in clear violation of section 254(e). The Joint Board and the Commission must therefore eliminate the identical support rule and require all CETCs to demonstrate their costs and justify their need for support before receiving any universal service support.

The Joint Board and the Commission should also develop a meaningful “public interest” test when designating CETCs in rural areas. The Joint Board and Commission should examine whether additional CETCs in an area will ultimately have an adverse effect on affordability contrary to universal service principles in Section 254 and quality of service. The public interest should require a balancing test that weighs the benefits and burdens of introducing multiple CETCs in rural, high-cost and sparsely populated areas. Artificially induced competition in rural areas serves to undermine the already weak business case for the deployment of new, costly services by rural telephone companies. It threatens the revenue base for these carriers but does not reduce the investments required to provide service. Since rural ILECs continue to have an obligation as the “carrier of last resort” they must continue to place and maintain the telephone plant necessary to meet this obligation. As a result, CETCs in rural areas and deployment of advanced services may be in conflict.

Section 254(e) requires carriers receiving support to “use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended” and “[a]ny such support should be explicit and sufficient to achieve the purposes of this section.” Currently, there is no way to ensure that CETCs receiving support on the basis of an ILEC’s cost are receiving “sufficient” universal service support. Support that is above the CETC’s cost necessarily fails the “sufficiency” test. Rate-of-return carriers are regulated in a manner that enables the Commission and the Universal Service Administrator to determine that their support is based on actual costs that are incurred for the provision of facilities used to provide services. Existing rules contain no effective means of determining whether support to a CETC has any relationship to the cost a CETC incurs in providing federally supported services. The Joint Board and the Commission therefore cannot assume that unregulated CETCs will self-regulate and conduct appropriate cost studies, and if the amount of support is excessive, return it to the Administrator.

A new look at the public interest analysis is needed to restore rationality into the way CETCs are designated to serve in rural telephone company study areas. The Commission and the states should reverse their prior course of equating the “public interest” with the mere introduction of competition. The “public interest” requires a balancing of costs and benefits and an examination of the long-term impact on service in rural areas.

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**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ hereby files its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) Public Notice in the above-captioned proceeding.² NTCA applauds the Commission and the Federal-State Joint Board on Universal Service (Joint Board) for opening this proceeding to address developing concerns related to the FCC's current universal service portability rules and eligible telecommunications carriers (ETC) designation process. Establishing remedial measures sooner rather than later will enable the Commission to overcome many of the current pressures on the high-cost universal service fund (USF) and preserve and advance universal service for many years to come.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Federal-State Board on Universal Service Seeking Comment on the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1, Public Notice (rel. Feb. 7, 2003)(Public Notice).

In this portion of the proceeding, the Joint Board should not act in isolation. The Commission has three other proceedings currently open that will impact its final decision in this proceeding. These proceedings include: (1) a review of the services included in the definition of universal service,³ (2) the reclassification of landline broadband service⁴ as an “information service,” “telecommunications service,” or “telecommunications,” and (3) the further review of proposed universal service contribution mechanisms.⁵ The outcome in these other proceedings will impact the number of carriers eligible to receive universal service support and the types of service providers that will be required to contribute to the universal service funding mechanisms. The Joint Board therefore should carefully monitor and consider the developments in these proceedings as part of its recommendation to the Commission concerning the universal service portability rules and the ETC designation process.

³ *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, FCC 03-13, Notice of Proposed Rulemaking (rel. Feb. 25, 2003).

⁴ *In the Matter of Appropriate Framework For Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers*, *Computer III Further Remand Proceedings*; *Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dockets Nos. 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. February 15, 2002).

⁵ *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, *1998 Biennial Regulatory Review – Streamline Contributor Reporting Requirements Associated with the Administration of Telecommunications Relay Service*, *North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration with the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Numbering Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, FCC 02-329, Report and Order and Second Further Notice of Proposed Rulemaking (rel. Dec.13, 2002) (Second FNPRM).

I. SUPPORT SHOULD BE PROVIDED BASED ON THE ACTUAL COST OF TOTAL FACILITIES TO ENSURE CONTINUED INVESTMENT BY RURAL TELECOMMUNICATIONS COMPANIES

A. Rural telecommunications companies should continue to receive support on the basis of their embedded costs

Since the early 20th century, AT&T, the Bell Operating Companies and GTE chose not to invest in facilities to provide basic telephone service to nearly 40 percent of the geographic area of the United States. This territory consisted primarily of the most rural, insular, and sparsely populated areas in the Nation. Thin populations and difficult landscapes made these vicinities too costly for large carriers to invest in and the risk of not recovering their investment was too high. Many Americans living in these areas therefore had to invest their own time, labor and money to form small subscriber-owned telephone cooperatives and community-based commercial telephone companies in order to bring service to their homes and communities.

Today, there are over 1,000 rural telephone companies serving rural America. These companies were the first and often the only companies willing to bring the latest telecommunications technology to Americans living in the remote areas of our country. This cooperative spirit that brought telephone service to rural America is the same spirit that Congress embraced when it enacted the Act so that all people of the United States, rural and urban, can have access to affordable and comparable telecommunications services.

During the last two decades, rural carriers have continued to invest in rural, high-cost and insular areas in the United States based on a system of rate-of-return regulation, NECA⁶ pooling, and universal service support. This existing regulatory structure has allowed the Commission to meet its Congressional mandate to ensure rural consumers access to telecommunications services at prices that are comparable to similar services and prices received by urban consumers. This

goal is now threatened by rules which create uncertainty about the stability of the mechanisms used to fund universal service. Rural consumers, meanwhile, continue to demand the high quality of service that they are accustomed to receiving from the carriers that have served them for decades. Rural carriers therefore have a strong interest in ensuring that reforms to the universal service rules provide for cost recovery consistent with their past decisions to invest in networks and incur costs under the then lawful regulatory rules.

Serving a rural telephone company service territory is unmistakably different than serving a non-rural carrier service territory. The average population density for a rural telephone company study area is only 13 persons per square mile compared to 105 persons per square mile in non-rural carrier study areas.⁷ Rural carriers, however, serve 93 percent of the Nation's study areas, but only eight percent of the Nation's access lines.⁸ When comparing rural carriers among themselves there are also significant differences in study area sizes and customer bases. For example, rural telcos serving the three smallest study area groupings (2,500 lines or less) encompass 48 percent of all study areas, but only five percent of all access lines served by rural carriers.⁹

Conversely, rural telcos serving the three largest study area groupings (20,000 lines or more) serve only 10.5 percent of all study areas, but 67 percent of all rural carrier access lines.¹⁰ The average population density of areas served by rural telcos also varies dramatically. Rural telcos in Alaska and Wyoming serve populations of 0.58 and 1.25 persons per square mile

⁶ National Exchange Carrier Association (NECA).

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, p. 11 (Rel. September 29, 2000) (RTF Recommendation).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

respectively, while some rural companies in other states serve populations of over 100 persons per square mile.¹¹

Each rural telecommunications company is unique and serves communities and markets that are also unique. These distinct areas include the remote woodlands in Maine and New Hampshire, small farming communities in Kansas, Iowa, Nebraska, and the Northern Plains states, insular fishing towns in Alaska, and small desert communities in Arizona, New Mexico, Texas, and Nevada. The diversity among these carriers with their varying operating conditions, small and in some cases declining population densities, and their lack of economies of scale necessitate that rural high-cost universal service support be based on the actual costs of the total facilities needed to provide service.

After two years of careful consideration and deliberation, the Rural Task Force (RTF) recommended, and the Commission and Joint Board agreed, that an embedded cost mechanism should be used for determining the amount of universal service support to rural carriers. The Commission adopted an embedded cost mechanism based in part on the RTF White Papers, which detailed the significant differences between rural carriers and non-rural carriers and the substantial diversity among rural carriers. The RTF has convincingly shown that the public will not benefit from the use of a hypothetical forward-looking economic cost (FLEC) proxy model to determine support for more than 1,000 highly diverse rural carriers.

The RTF has also thoroughly demonstrated that a rural carrier support model based upon FLEC output costs fails to account for much of the cost already incurred in the build-out of a

¹¹ *Id.*

network in rural areas.¹² Indeed, the RTF found in its study of the non-rural carrier FLEC model that:

[t]he aggregate results of this study suggest that, when viewed on an individual Rural Carrier basis, the costs generated by the [FLEC model] are likely to vary widely from reasonable estimates of forward-looking costs. As a result, it is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking cost of rural carriers.¹³

The Rural Task Force further stated that:

applying the [FLEC model] directly to the task of sizing the national Rural Carrier high cost fund and using the same policy mandates adopted for non-Rural Carriers would reduce available support to Rural Carriers from the current \$1.553 billion to \$451 million, a reduction of over one billion dollars...[W]e conclude that the non-rural method and [FLEC model] developed for the non-Rural Carriers are not the appropriate tools and application for Rural Carriers and will not produce a sufficient universal service mechanism for Rural Carriers that is in the public interest and consistent with the principles of the 1996 Act.¹⁴

The Commission agreed with these findings when it adopted a modified version of the RTF's recommended embedded cost model for determining high-cost support for rural carriers on May 10, 2001.¹⁵ Today, the conditions under which rural companies operate have not changed significantly enough to necessitate any shift away from the embedded cost approach for determining rural high-cost universal service support. NTCA therefore urges the Joint Board and Commission to continue to allow rural telecommunications companies to receive support based on their actual embedded costs.

¹² See, Comments of the Rural Telephone Coalition, CC Docket Nos. 96-45 and 97-160, DA 98-715, May 15, 1998 at 12.

¹³ RTF Recommendation at 19.

¹⁴ RTF Recommendation at 20-21.

¹⁵ *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Multi-State Group (MAG) Plan for the Regulation of Interstate Services of Non-Price Cap LEC Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001)(RTF Order).

B. All lines must be included in determining embedded costs.

New regulatory policies and revised universal service portability rules must permit rate-of-return rural carriers to recover their investment in the total network facilities needed to provide comparable rates and services to customers living in rural and high-cost areas. This means that all lines, primary and secondary, must be included when determining a rural carrier's embedded costs. High-cost support reflects the legitimate costs of rate-of-return rural carriers serving their entire rural study areas. Without support based on these lawfully approved costs, many consumers living in rural high-cost regions of the United States would not have access to affordable and comparable telecommunications services. Any reduction in high-cost support due to limiting support to primary lines would adversely affect the ability of rural carriers to deliver universal service to consumers living in rural, high-cost, and insular areas at affordable prices.

Rural ILECs are the sole providers of high-quality, ubiquitous telecommunications service throughout their service territories. Rural ILECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for the full recovery of certain amounts of a carrier's embedded costs. If these costs, or a substantial portion of these costs, are no longer recovered through universal service, and an alternative recovery method is not available or prohibited by regulators, then these costs will become stranded investment.¹⁶

As Commissioner Copps stated:

[i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.¹⁷

¹⁶ The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.

¹⁷ *MAG Order, Dissenting Statement of Commissioner Michael J. Copps.*

Limiting support to anything less than total network facilities will halt future investment to modernize the telecommunications infrastructure in rural America and jeopardize the ability of rural carriers to service debt for plant facilities already constructed and lawfully approved by regulators.

If rural ILECs lose their incentive to invest and existing investments become stranded, some consumers living in some rural areas would very likely be deprived of basic service. As Commissioner Martin previously warned:

I am hesitant to subsidize multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area leading to inefficient and/or stranded investment and a ballooning universal service fund.”¹⁸

Insufficient universal service support funding would also threaten the ability of rural ILECs to offer advanced services to their customers, schools, libraries, and health care facilities. Given the Act’s goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, such a result would be completely at odds with the intent of Section 254 of the Act.

¹⁸ *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket 00-256; *Federal-State Joint Board on Universal Service*, CC Docket 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket 98-77; and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers*, CC Docket 98-166, FCC 01-304, ¶142 (rel. November 8, 2001) (*MAG Order*), *Separate Statement of Commissioner Kevin J. Martin*. (*MAG Order*), *Separate Statement of Commissioner Kevin J. Martin*.

II. THE DELIVERY OF COMPARABLE SERVICES AND RATES FOR CUSTOMERS IN RURAL AND HIGH COST AREAS IS WHAT THE RULES ARE INTENDED TO ACCOMPLISH

- A. The primary goal of Sections 151 and 254 is to ensure that consumers in rural and high cost areas receive telecommunications and information services that are comparable in quality and rates to those received by consumers in urban areas.**

The rules under which high-cost support are presently administered distort and frustrate the Congressional policies embedded in Sections 251 and 254 of the Act.¹⁹ The Commission's Referral Order recognizes that some corrective measures are needed to address the unintended consequences of these so-called portability rules.²⁰ Under the present regime, the goal of delivering comparable services at comparable rates in high-cost areas has been lost and sacrificed to the misguided program of using high-cost universal service support to artificially manufacture competition. The Commission has unfortunately led the way in ignoring the basic tenets of Sections 151 and 254. As an example, in the Western Wireless Wyoming ETC designation case, the Commission provided the first signal that it saw high-cost universal support primarily as an instrument to create artificial competition.²¹ In subsequent ETC designation proceedings, the Commission has consistently followed this pattern.

This proceeding is an opportunity for the Joint Board to recommend that the Commission alter its misguided interpretation of Sections 254 and 214(e)(6)²² of the Act. There is no dispute

¹⁹ 47 U.S.C. § 251 provides that all Americans, so far as possible, should have access to telecommunications services at reasonable charges. 47 U.S.C. § 254.

²⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 02-307 (rel. Nov. 8, 2002) (Referral Order).

²¹ *In the Matter of the Federal-State Joint Board on Universal Service, Petition for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket 94-65, FCC 01-311, (rel. Oct. 19, 2001).

²² 47 U.S.C. § 214(e) (6).

that corrective measures are needed to maintain universal service on a going forward basis.²³ Distributing support to multiple CETCs based on ILEC costs has already led to the rapid ballooning of the high-cost universal service fund and can be expected to result in the eventual degradation of service quality in low-density, high-cost rural study areas.²⁴ Universal service support to CETCs has jumped from \$500,000 in 1999 to a projected \$140 million in 2003.²⁵ In April 2003, Nextel and Alltel joined the parade of wireless carriers seeking ETC status by filing petitions for ETC designation with the Commission in the states of New York and Alabama and Virginia, respectively. If all wireless carriers gain ETC designation, the annual funding level of the universal service fund will grow by approximately \$2 billion.²⁶

The potential uncontrolled growth of the high-cost support fund is a direct result of the failure to follow the statutory principles in Sections 151, 254 and 214(e)(6). Sections 151 and 254 are structured to ensure the widespread availability of adequate facilities at reasonable charges to all the people of the United States and the comparability of rates and services between urban and high-cost rural areas. These provisions also require that support be “sufficient” and “predictable.” Section 214(e)(6) clearly recognizes that the differences in rural areas of the United States require a different standard for the introduction of multiple eligible telecommunications carriers in these areas.

²³ *The Coming Train Wreck in Universal Service*, McLean & Brown, Issue Update, Special Edition, (January 18, 2002); *One Year Later – One Year Closer, The Coming Train Wreck in Universal Service*, McLean & Brown, Issue Update, Special Edition, (January 18, 2003).

²⁴ NPRM, ¶84.

²⁵ *In the Matter of “The Future of Universal Service”* Statement by Robert Orent, President and CEO of Hiawatha Communications on behalf of the Independent Telecommunications Alliance (ITTA), National Rural Telecom Association (NRTA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Western Alliance before the United States Senate Committee on Commerce, Science, & Transportation Subcommittee on Communications, p. 2 (April 2, 2003).

²⁶ *Universal Service in Rural America: A Congressional Mandate at Risk*, by Stuart Polikoff, Director of Government Relations, Organization for the Promotion and Advancement of Small Telephone Companies (OPASTCO), p. viii, (January 2003).

The Joint Board asks whether the Commission's current universal service rules "promote efficient competition in high-cost areas?"²⁷ This question will only lead the Board down the same wrong course that has resulted from the Commission's misguided focus. The issue is not whether current support is promoting competition but whether universal service is being maintained and preserved in accordance with the principles of Section 254. The Board should be looking at whether rural customers are receiving comparable services and rates as a result of current rules. Will current rules result in sustained comparability of rates and services in rural areas or will they lead to a deterioration of services and disparate rates? Will current rules promote investment in the facilities needed to afford rural customers access to comparable broadband services at comparable rates? As Professor Dale Lehman correctly identifies:

Artificially induced competition in rural areas serves to undermine the already weak business case for broadband deployment. It threatens the revenue base for [rural carriers] but does not reduce the investments required to provide service [and continue to meet carrier of last resort obligations]. ... Universal service should not be used to induce competition. Entry will occur where market conditions permit it.²⁸

The Joint Board should look beyond the short term and consider the impact of existing rules on evolving services that are likely to be deployed widely in urban areas. It cannot be assumed that evolving services will emerge in high-cost areas merely as a result of introducing multiple CETCs.

²⁷ Public Notice ¶16.

²⁸ *The Cost of Competition*, by Dale Lehman, NTCA 21st Century White Paper Series, Paper 3, p. 3 (December 2000). Dale Lehman is currently the Director of the MBA in Telecommunications Program at Alaska Pacific University. He has a Ph.D. in Economics from the University of Rochester. He is also coauthor (with Dennis Weisman) of *The Telecommunications Act of 1996: The "Costs" of Managed Competition*, Kluwer Academic Publishers (September 2000).

B. Existing rules do not foster “Competitive Neutrality”

Section 254 directs the Commission and the Joint Board to establish rules and implement policy based on the principles listed in 254(b). These principles include:

- (1) Quality rates and services,
- (2) Access to advanced services,
- (3) Access to rural and high-cost areas,
- (4) Equitable and non-discriminatory contributions,
- (5) Specific and predictable support mechanisms,
- (6) Access to advanced telecommunications for schools, health care and libraries, and
- (7) Additional principles that the Joint Board and the FCC determine are necessary and appropriate for the protection of the public interest, convenience and necessity.

As a result of principle (7), the Commission used its discretion in 1997 to establish the additional principle of "competitive neutrality" which it defined as "universal support mechanisms and rules that neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."²⁹

The Commission's principle of competitive neutrality was predicated on the assumption that the public would benefit from fair competition between all types of telecommunications providers.³⁰ The Commission's goal of promoting multiple technologies is laudable. Universal service is advanced by the widespread availability of the latest technology to rural and high-cost customers. Despite the laudable goal of competitive neutrality, the Commission's rules and its attempts to apply the additional competitive neutrality principle in Section 214(e)(6) designations, for example, in fact favor technologies that are less burdened with regulations.

²⁹ See, *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶ 47 (rel. May 8, 1997).

The “identical support” rule is not “competitively neutral.” It allows CETCs to receive the same per line support as ILECs, based on the ILEC’s costs.³¹ With the passage of time it has become clear that providing the ILEC’s per line support to all ETCs, regardless of their cost structure or their regulatory status, defeats the Commission’s guiding principle of “competitive neutrality.” The Commission’s rules now permit CETCs to receive this support for every working loop they serve in the ILEC’s service area, regardless of whether the CETC’s costs to provide service are below the national benchmark to qualify for support. CETCs that have no loops, *per se*, are treated as if they did. Thus, wireless carriers are allowed to substitute customer-billing addresses for loops and to receive ICLS based on a support mechanism designed to recover the common line cost of ILECs.³² In addition, CETCs that purchase unbundled network elements (UNEs) are first, allowed to treat leased facilities as their “own” despite Section 214(e)(1)(A), and second, allowed to recover in excess of their costs.³³ These rules advantage classes of carriers by allowing them to receive support unrelated to their costs are not competitively neutral. The rules are not competitively neutral because classes of CETCs are held to a lower service standard than the incumbents. The rules have undeniably become the basis for unfair competition in high-cost rural service areas and the critical instrument used by CETCs for gaming universal service support dollars that have no relationship to their cost of providing service.

³⁰ The identical support rule was adopted under this same assumption. *See, In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶¶ 286-290 (rel. May 8, 1997).

³¹ *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶¶ 47-50 (rel. May 8, 1997).

³² NTCA Petition for Reconsideration in the Multi-Association Group (MAG) Order, CC Docket 00-256 (December 31, 2001).

³³ *In the Matter of ACS of Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, as Amended*, CC Docket No. 96-45, DA 02-1853, Public Notice (rel. August 2, 2002).

Wireless CETCs, for example, are exempt from rate and state entry regulation; this allows them to avoid the substantial costs associated with carrier-of-last-resort obligations, service quality requirements, cost-studies, rate cases, accounting obligations, separations requirements, audit reviews, and other state and federal regulatory mandates. Wireless CETCs neither provide the same quality of local service nor interstate access services to consumers. They do not use the same type of facilities to provide the services or incur the same costs for providing the services as rural ILECs. Wireless CETCs do not have high-cost loops and do not provide ubiquitous local service. They also do not have the interstate access costs that are recovered through the ICLS mechanism because they have no wireline local loops on which the ICLS mechanism is based. And, unlike rural ILECs, wireless CETCs do not offer equal access to all long distance carriers and hence wireless CETC costs for providing access to a single long distance carrier are likely substantially lower than the rural ILEC's costs.

Indeed, the current rules have created an insidious incentive for wireless carriers to seek CETC status in high-cost areas where they already provide ancillary wireless service to ILEC customers, because they can obtain high-cost support without ever demonstrating their costs or justifying their need for support. The Joint Board and the Commission should revise the principle of "competitive neutrality" by eliminating the identical support rule and holding all ETCs accountable to comparable standards of service before it is too late. There is no point in waiting for the train wreck. Remedial measures should be put in place now.

III. SUPPORT SHOULD BE EXPLICIT AND SUFFICIENT TO ACHIEVE THE INTENDED PURPOSES OF SECTIONS 254(e) OF THE ACT

Section 254(e) requires that CETC support be used "only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended" and "[a]ny such

support should be explicit and sufficient to achieve the purposes of this section.”³⁴ Congress understood that the public benefits when a carrier can enter a market and provide an equivalent level of service at a lower price. But when lower prices come as a result of a rule that allows wireless CETCs to receive excessive support above their costs, the public ultimately suffers through poorer service that results from the dispersion of limited resources to providers and higher universal service contribution from contributors.

Congress never envisioned the scenario that has developed as a result of the Commission’s interjection of an additional principle of universal service that includes a definition of competitive neutrality.³⁵ The current application of the identical support rule, however, demonstrates the fallacy of the definition of competitive neutrality. As Commissioner Abernathy correctly identified:

Requiring incumbent LECs, but no one else, to comply with costly regulations and to open their books to competitors raises obvious questions of competitive neutrality.³⁶

The portability rules have clearly undermined the Commission’s ability to enforce section 254(e). Wireless CETCs can easily game the system:

by ‘entering’ a service territory as an eligible telecommunications carrier (ETC) using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the ILEC’s retail services where facilities-based service is not cost effective. Thus, ... a wireless carrier ... could obtain ETC status without incurring the costs, or providing the quality of service comparable to the ILEC’s, and yet obtain per-line support at the ILEC’s level. The ILEC’s per line support would represent costs far in

³⁴ 47 U.S.C. § 254(e).

³⁵ *Universal Service First Report and Order*, 12 FCC Rcd 8932-34, ¶¶ 286-290. *MAG Order* at ¶ 151.

³⁶ Separate Statement of Commission Kathleen Q. Abernathy, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, FCC 01-305, In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting, p. 2 (rel. November 5, 2001).

excess of those associated with the CETC's costs or service. The CETC effectively could receive a windfall...³⁷

This regulatory disparity coupled with the application of the identical support rule has provided an irresistible temptation for wireless carriers. Wireless carriers cannot resist seeking CETC status and high-cost support in rural areas. Even if the management of a wireless carrier knows that their costs are low enough to compete effectively without the additional support, they are compelled by their fiduciary duty to seek support so as to maximize profits and avoid lost opportunities to obtain support. Indeed, the investment firm Salomon Smith Barney recently advised investors that, "USF is the single most important opportunity for rural wireless carriers to improve their return on capital."³⁸ Wireless carriers therefore have every reason to seek CETC status in rural areas, particularly when they know they can do so without ever justifying their need for support or demonstrating their costs.

In many instances when a wireless CETC receives universal service support under these circumstances it is a pure windfall resulting in excessive support in clear violation of section 254(e).³⁹ The United States Court of Appeals for the 5th Circuit has already warned: "excessive funding may itself violate the sufficiency of the Act."⁴⁰ The Joint Board and the Commission must now eliminate the identical support rule by requiring all CETCs to demonstrate their costs and justify their need for support before receiving any universal service support. This will bring the universal service portability rules into compliance with Section 254(e) and assist the Commission in preserving and advancing universal service for generations to come

³⁷ Comments of the Montana Telecommunications Association, CC Docket 96-45, filed November 3, 2000, pp. 3-4.

³⁸ Salomon Smith Barney, Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers, Multi-Company Note, p. 1 (January 21, 2003).

III. BIDDING FOR UNIVERSAL SERVICE SUPPORT IS CONTRARY TO THE ACT.

A. Competitive bidding does not comport with the Act.

The Joint Board seeks comment on whether and how auctions might be utilized to award support. Auctions assume that the public will benefit if support is limited to the least cost provider. As explained above, the object of high-cost support is to ensure that consumers in rural areas receive comparable services to those received by urban consumers and that they are able to obtain those services at comparable rates. A system that limits support to the lowest bidder is highly unlikely to achieve this objective and ensure that the goals of the Act will be consistently achieved throughout the United States. Support to the lowest bidder is inconsistent with the notion that companies must invest in networks to maintain service and that the evolution of the definition of universal service requires additional and timely investment in new technologies. The Commission's experience with competitive bidding for spectrum-based licenses, (in the NextWave case, for example), shows that the speculative nature of auctions has the potential to create years of uncertainty for licensees and the public. Highly erratic, competitive bidding is at odds with an Act that requires "specific, predictable, and sufficient"⁴¹ support mechanisms.

Additionally, the use of auctions to decide which carriers obtain support and how much they obtain would deprive the states of regulatory oversight of the ETC designation process and impinge on the ability of federal and state regulators to assess whether support is "sufficient" to achieve the goals of universal service. Even if ETC designations were left to the states, the use of competitive bidding to award support would render a state's determination *pro forma*.

³⁹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999) ("Excessive funding may itself violate the sufficiency of the Act").

⁴⁰ *Id.*

⁴¹ 47 U.S.C. § 254(b)(5).

Auctions would make state public interest findings irrelevant. The Act does not give the Commission the authority to compel states to proceed by competitive bidding. States have the statutory option to choose one or multiple eligible telecommunications carriers in rural areas if it is in the public interest and they cannot be forced to conduct an auction themselves or submit to the results of a Commission auction.⁴² Also, the circumstances that allowed a state to designate a carrier as an eligible telecommunications carrier might change after competitive bidding. A bid that is neither “sufficient” nor in the public interest, due to variable auction results, might not satisfy a state’s original decision.

Even if the Commission had such authority or works with the states to compel all state designated eligible telecommunications carriers to bid, the bidding process might not satisfy the level of quality service contemplated by the Act, since the winning bidder could be the carrier which intends to commit the least amount of resources to the area. Competitive bidding is contrary to the Act’s emphasis on “quality services.”⁴³ More importantly, basing the study area support level on the lowest bid from all eligible carriers⁴⁴ would risk providing a support level that would not be “sufficient” as the Act requires. Under this scenario, a CLEC would be able to target the higher volume and lower cost customers in an ILEC’s study area through selective marketing and preferential rates. As a result, the CLEC would be able to lower its universal service support bid, forcing the ILEC to make do with insufficient support for the remaining higher cost customers.

⁴²47 U.S.C. § 214(e)(2).

⁴³47 C.F.R. § 254(b)(1).

⁴⁴Recommended Decision, ¶ 343.

B. Auctions are fraught with practical problems.

It has often been argued that the winners at auction are those who value the auctioned item the most. In reality, however, winning bidders are those for whom the opportunity cost of the funds bid is the lowest. An auction for USF funds, then, would tend to favor: (1) those with access to large amounts of capital; or (2) those who would prefer to have cash on hand rather than spending it to serve their customers. In short, a USF auction would give an advantage to those parties who need USF funds the least.

Lastly, auctions are expensive to conduct, time consuming, administratively difficult, and require some degree of training for participants. The potential for fraud, whether on the part of an individual participant or through the collusion of several parties, is always present. Constant monitoring and vigilance would therefore be required to ensure the integrity of the auction results. The cost of administering the auctions, preventing fraud, and monitoring the results would ultimately increase the size of the universal service fund and outweigh any potential benefits from the process.

V. A MEANINGFUL “PUBLIC INTEREST” TEST SHOULD BE DEVELOPED AND APPLIED IN DESIGNATIONS THAT AFFECT RURAL AREAS.

In adopting the 1996 Act, Congress recognized that areas served by rural telephone companies are different than those served by larger carriers. Congress favored competition, but recognized that introducing competition into areas that cannot otherwise support competition would ultimately harm consumers. For this reason, Section 214(e)(6) specifically requires that there must be a finding of the “public interest” before an additional ETC is designated in an area served by a rural telephone company. Thus, while a state commission must designate other

eligible carriers for non-rural areas, states and the Commission (when it acts instead of the state), may only designate additional eligible carriers for areas served by a rural telephone company upon a specific finding that such a designation is in the public interest.

A. The Commission and the states should reexamine the criteria for designating CETCs in rural areas.

The states are initially given the responsibility of determining whether or not granting additional ETCs in rural areas is in the public interest. The state, rather than the federal government, is obviously best able to make this public interest determination. The state is familiar with the demographics of the proposed service area and can best determine how competition will affect things such as the state universal service fund, if any, and the availability of service and the price paid for it. However, if the state lacks jurisdiction, the Commission must make the determination.

In making this public interest determination, the Commission may recognize that promoting competition was one of the goals of the Act. Unfortunately, the Commission and the states have treated competition as a preeminent goal to be promoted at the expense of all others including a sustainable universal service system that ensures the benefits of comparable services, reasonable rates and a future that will include an evolving level of services for rural customers. Congress mandated the introduction of multiple ETCs in urban areas and presumed that universal service would be promoted thereby. It made no such presumption for areas served by rural telephone companies.

In the recent past, when it was called upon to do so, the Commission performed no more than a perfunctory CETC public interest analysis. The Commission has found that designation in rural areas fulfills federal policies favoring competition. It has held that designation of CETCs promotes competition and benefits consumers by increasing customer choice, and access to

innovative services and new technologies and has never denied a competitor's ETC request on the basis that it would not be in the "public interest."⁴⁵ The Commission has not sufficiently considered that subsidized competition and competition for competition's sake are not the goals of the 1996 Act and may ultimately harm the consumer. Congress must have intended that the public interest in Section 214(e)(6) was not synonymous with the mere introduction of competition or it would not have required more than the mere certification of all applicants seeking ETC designation.

Commissioner Adelstein recently addressed the need to balance competition against the public good, stating, "The public interest . . . demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications."⁴⁶

Commissioner Adelstein's remarks echo earlier statements of Commissioner Martin. In a separate statement to the Order adopting the MAG plan, the Commissioner questioned "the Commission's policy . . . of using universal service support as a means of creating 'competition' in high cost areas."⁴⁷ Commissioner Martin recognized that subsidizing multiple competitors in an area that cannot support it "may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or

⁴⁵ See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001); *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. November 27, 2002).

⁴⁶ Speech by Commissioner Jonathan Adelstein entitled "Rural America and the Promise of Tomorrow," NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

⁴⁷ Separate Statement of Commissioner Kevin J. Martin in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on Universal Service Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613 (2001).

stranded investment and a ballooning universal service fund.”⁴⁸ This is an issue that should be considered in determining whether an additional ETC is in the public interest.

The Commission should examine whether additional ETCs in an area will ultimately have an adverse effect on affordability contrary to universal service principles and quality service.⁴⁹ The public interest requires a balancing test that weighs the benefits and burdens of introducing multiple ETCs in rural, high-cost and sparsely populated areas. As the incumbent loses subscribers in these urban markets, those remaining on the network may have to pay more for the same service so that adequate service remains available.

The Commission should also consider whether or not additional ETCs in rural areas will promote the deployment of advanced services, another universal service principle.⁵⁰ Artificially induced competition in rural areas serves to undermine the already weak business case for the deployment of new, costly services by rural telephone companies. It threatens the revenue base for these carriers but does not reduce the investments required to provide service. Furthermore, since rural ILECs continue to have an obligation as the “carrier of last resort” they must continue to place and maintain the telephone plant necessary to meet this obligation. As a result, CETCs in rural areas and deployment of advanced services may be in conflict.⁵¹

The Act also guarantees that consumers in rural and high cost areas have services and rates comparable to urban areas.⁵² The Act does not guarantee that rural and high cost areas have the same number of supported providers as urban areas. Therefore, rather than simply granting additional ETC designations, the Commission must look at whether support will in fact promote

⁴⁸ *Id.*

⁴⁹ See 47 U.S.C. § 254(b)(1).

⁵⁰ See 47 U.S.C. § 254(b)(2).

⁵¹ See Lehman, Dale, *The Cost of Competition*, The NTCA 21st Century White Paper Series. Paper 3 (December 2000).

⁵² See 47 U.S.C. § 254(b)(3).

comparability between rural and urban areas. As Commission Adelstein recognized, “[those performing the public interest analysis] also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.”⁵³

Consumers in this nation are guaranteed that there are specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.⁵⁴ Therefore, it is incorrect for regulators to ignore the demand and ultimate sustainability of the universal service mechanisms as it decides CETC requests, as happened in the recent RCC decision.⁵⁵

B. The public interest analysis should examine whether support will be used to provide service in rural areas.

The Commission is required to establish rules based on the principle that there should be “specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”⁵⁶ Section 254(e) also requires carriers receiving support to “use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

Currently, there is no way to ensure that CETCs receiving support on the basis of the ILECs cost are receiving “sufficient” universal service support, or whether that support is being used for the purposes for which it is intended. Rate-of-return (RoR) carriers are regulated in a manner that enables the Commission and the Universal Service Administrator to determine that their support is based on actual costs that are incurred for the provision of facilities used to provide services. Unregulated CETCs provide no more than a letter certifying that the support is

⁵³ Speech by Commissioner Jonathan Adelstein, “Rural America and the Promise of Tomorrow,” NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

⁵⁴ 47 U.S.C. § 254(b)(5).

⁵⁵ *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order (rel. Nov. 27, 2002).

⁵⁶ 47 U.S.C. § 254(b)(5).

being used for intended purposes. They are not required to perform cost studies or provide any information about their costs. A CETC's certification letter, whether bona fide or not, does not provide the essential information necessary to determine if support is used to provide the supported services. The public interest in the sustainability of universal service requires more than an assumption that ILEC based costs provided to unregulated CETCs meet the statutory requirements of "sufficiency."

To avoid a windfall for CETCs, to comply with the Act, and to ensure the sustainability of the universal service fund, the Commission and the states should expand the public interest analysis. Before granting CETC status, they should look at where the asserted supported service is being provided, and whether service is indeed provided to customers' rural or high cost areas. ETC status should not be granted to carriers for the general purpose of improving their bottom line.

C. The mere promotion of competition is not a valid reason to designate CETCs below the study area level in rural areas

The Commission questions how disaggregation affects per-line high-cost universal service support at below the study area level. NTCA submits that the mere disaggregation of support by a rural carrier should not create an automatic redefinition of a rural telephone company's service area. A thorough and complete public interest analysis is crucial before any competitor should be permitted to provide service to anything other than the entire study area.

Section 214(e)(5) provides that for an area served by a rural telephone company, the term "service area" means such company's study area. Therefore, if a competitor receives ETC designation for an area served by a rural telephone company, it must offer service throughout the company's study area. The statute implicitly acknowledges that study area wide service and support to companies willing to provide service throughout rural telephone company study areas

is most consistent with the goals of the Act. It recognizes that a “*quid pro quo*” of designation in rural areas is the willingness to provide ubiquitous service and assume the obligations that are entailed thereby. The “service area” may be comprised of something other than the company’s study area only if the Commission and the States establish a different definition, after taking into account the recommendations of a Federal-State Joint Board.

When the Joint Board evaluated this issue, it recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, with good reason. The Joint Board stated that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize “cream skimming” by competitors.⁵⁷ The Joint Board should reaffirm its position that study area wide service should be the norm in rural study areas. Cream skimming is minimized since competitors must provide service throughout the rural telephone company’s study areas and cannot serve only the lowest cost portions of a rural telephone company’s study area. Providing service throughout a study area is critical in rural areas where sparse densities make area-wide coverage less attractive. Cream skimming makes it possible to defeat Congress’s goal of providing comparable services to all customers residing in rural areas.

In a recent decision, the Commission looked at a wireless company seeking ETC designation throughout its licensed service area.⁵⁸ The licensed service area covered portions of study areas served by seven rural telephone companies. The Commission granted the ETC request and divided the rural telephone companies’ service areas, finding that the threat of cream

⁵⁷ *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 179-180 (1996).

⁵⁸ *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 02-3181 (rel. Nov. 27, 2002).

skimming was minimized. It found that five of the companies filed disaggregation and targeting plans, minimizing opportunities for rural cream skimming. Disaggregation plans increase the likelihood that the incumbent's support is targeted to reflect the incumbent's cost. The plans do not remove the inherent problems that are created by basing support on the ILEC's cost in the first place. The fact is that CETCs serving partial rural study areas can still cream skim which they escape the obligations of ILECs with COLR obligations to serve. For the other two companies, the Commission stated that the threat is minimized "by the fact that [the wireless company] is constrained to provide service where it is licensed by the Commission."⁵⁹ Regardless of the nature of the threat, it must be assumed that Congress was aware of this limitation but nonetheless intended that CETCs serve the entire rural study area.

Examining the Commission's rationale, it is difficult to imagine a scenario in which the Commission would deny a request to redefine the service area of a rural telephone company. There was no public interest analysis, and no discussion of the affect of the redefinition on the rural consumer.

This decision also does not address the fact that cream skimming may occur whether or not the wireless licensee chooses which area it serves. It is entirely possible that the lowest cost portion of a rural study area is the only area the wireless carrier is licensed to serve. This inadvertent or accidental cream skimming by a wireless carrier is no less harmful than intentional cream skimming, and can do substantial damage to the rural telephone company and its remaining customers.⁶⁰

⁵⁹ *Id.*, p. 12

⁶⁰ The Commission has not yet clarified the meaning of "capture" and therefore competing ETCs receive support for service to the same customer. When and if the Commission defines the term, cream skimming by ETC's with no carrier of last resort (COLR) obligations will result in higher per unit costs for the customers of carriers with COLR obligations.

Ultimately, it sets a dangerous precedent to allow a wireless carrier to serve just a portion of a study area. At best, the customers outside of the wireless carrier's licensed territory may be forced to pay higher rates to make up lost revenue and suffer decreased quality; at worst, it may destroy a rural telephone company. The Commission has a duty to consider the adverse effect on rural customers regardless of the competitive carrier's good or bad intentions. Before it may designate a carrier at below the study area level, the Commission must determine that such a designation is in the public interest, consistent with the principles of universal service. The mere introduction of competition, or that the belief that such designation is the only way for the competitor to receive ETC designation, is not reason enough. The consumers situated in the rural LECs remaining service area may be irreparably harmed. The Section 214 "throughout study area" language contemplates ubiquitous service for consumers and a level playing field for competitors.

D. Commission ETC designations can be an example to the states

The Commission questions at paragraph 34 whether it should establish permissive federal guidelines for states to use in designating ETCs pursuant to section 214(e)(2). It then goes one step further and asks whether the Commission should encourage states to have similar standards for the designation of ETCs. It is NTCA's position that the Commission should not establish guidelines, but rather should serve as a positive example of how to conduct an ETC analysis. The FCC should not set permissive guidelines for ETC designations. Permissive guidelines all too often become the standard by which everything is measured. The states are in the best position to determine the public interest for their locality, as Congress recognized. The Federal Communications Commission should not influence unduly the state public service commissions. Rather than provide "guidelines," the FCC should serve as an example to the states of how to

conduct a proper public interest analysis. Its decisions should be well thought out, carefully explained and be in keeping with the universal service principles outlined above.

IV. CONCLUSION

Based on the above reasons, NTCA urges the Commission to adopt NTCA's recommended changes to the universal service portability rules and ETC designation process.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 03J-1 was served on this 5th day of May 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

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